IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8827 of 2001

HONOURABLE MR.JUSTICE KS JHAVERI

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GUJARAT WATER SUPPLY & SEWERAGE BOARD - Petitioner(s)
Versus
BIPINBHAI SAMJIBHAI PATEL - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1,
MR DIPAK R DAVE for Respondent(s) : 1,
MR HEMANG R RAWAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI
Date : 17/11/2005

ORAL JUDGMENT

1. This petition is directed against the award passed by the Labour Court, Valsad in Reference (LCV) No.585/96 whereby the petitioner was directed to reinstate the respondent in service with full back wages.

2. The short facts of the case are that the respondent was employed by the petitioner as a daily wager in the month of December 1991 and was continued as such depending upon availability of the work and funds and in absence of the work he was discontinued with effect from 1st August 1995.

3. The respondent raised a dispute which was referred to Labour Court and numbered as Reference (LCV) No.586/96. The Labour Court, after hearing the parties, passed the award as stated hereinabove, which is challenged in the present petition.

4. Learned counsel for the petitioner submitted that the Labour Court ought not to have awarded reinstatement with back wages. He submitted that there was no question of following due procedure of the provisions of Section 25F of the Industrial Disputes Act.

5. Learned counsel for the respondent submitted that the Labour Court has considered all the aspects of the matter and therefore no interference may be caused in the petition.

6. In pursuance of the order dated 19th December 2001, whereby interim relief was granted, the respondent was reinstated and paid 50% back wages. Therefore at this stage it would not be appropriate to disturb the said position after a period of almost four years. Therefore the only question is about 50% back wages.

6. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order.

7. In the premises aforesaid, the petition is partly allowed. the award of the Labour Court is modified to the effect that the respondent workman is entitled to reinstatement with continuity of service along with 50% back wages. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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